



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with adjourned reconvened hearing for the Application for Dispute Resolution filed by the Tenant under the Residential Tenancy Act (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on October 31, 2020, and to recover the filing fee paid for this application. The matter was set for a conference call.

This matter initially proceeded by way of a hearing on January 28, 2021 and a Decision and Order for that hearing was issued on January 30, 2021, granting the Landlord an Order of Possession effective two days after service on the Tenant. On February 8, 2021, the Tenant applied for a review consideration of the Decision issued on January 30, 2021. The Tenant’s review consideration application was dismissed. On February 11, 2021, the Tenant applied for Clarification of the Decision issued on January 30, 2021. A Clarification Decision was issued on February 19, 2021, upholding the original Decision and Order issued on January 30, 2021.

The Tenant applied to the British Columbia Supreme Court (the “BCSC”) for Review of the Decision, Order, Review Consideration and Clarification issued by the Residential Tenancy Branch (RTB) for their application. The BCSC set aside the original Arbitrator's decision on the Disturbance Allegation and ordered that the RTB reconsider the Disturbance Allegation by way of a new hearing before a different arbitrator.

The Landlord’s Agent (the “Landlord”) and the Tenant, the Tenant’s Advocate, and a support person (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the

Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

This reconvened hearing decision should be read in conjunction with the Original Hearing decision dated January 30, 2021, and the Review Consideration decision dated February 17, 2021, the Clarification decision dated February 19, 2021, and the BCSC decision dated April 22, 2021.

Issues to be Decided

- Should the Notice issued on October 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the return for their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the Notice to end tenancy to the Tenant on October 31, 2020, by personal service. The Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice that is before me in this proceeding is as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord

The Notice states that the Tenants must move out of the rental unit by November 30, 2020. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that on September 19, 2020 they received two complaints from the unit adjacent to this rental unit. The Landlord testified that the complaints was stated that the neighbours had overheard the Tenant in a heated and aggressive argument with the Tenant's partner. The complaints stated that they had overheard swearing, slamming doors, and objects being thrown against the walls, which caused them to be concerned about the Tenant's partner. The Landlord testified that they contacted the Tenant right away by phone but that the Tenant refused to speak to them about the complaints. The Landlord testified that they issued a warning letter to the Tenant regarding this matter, advising them that they would be issuing a Notice to end tenancy if these disturbances continued.

The Landlord testified that the written complaints they received from the Complainants had indicated that they had been disturbed by the Tenant for several months before making this complaint. The Landlord was asked if they had received disturbance complaints regarding this Tenant before September 19, 2021; the Landlord testified that September 19, 2020, was the first complaint they had received regarding this Tenant. The Landlord submitted two email complaints into documentary evidence.

The Landlord testified that on October 27, 2020 they received another complaint regarding another loud altercation the Tenant had gotten into with their partner on October 26, 2020, indicating that the neighbours had called the police due to the severity of this incident. The Landlord submitted a written statement from the complainant into documentary evidence.

The Tenant agreed that they had gotten into a verbal altercation with their partner on September 19, 2020, and October 26, 2020, but disagreed as to the severity of the argument between them and their now ex-partner. The Tenant testified that they agreed the police attended the rental unit due to the October 26, 2020 incident and that the police report shows that the police who attended only found evidence of a verbal altercation and no assault. The Tenant submitted a copy of the police report into documentary evidence.

The Tenant testified that they have lived in the rental building for 30 years and that the September 19 and October 26, 2020 complaints are the only complaints they have received during their entire tenancy. The Tenant testified that these two verbal arguments they had did not constitute a sufficient event to end their tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on October 31, 2020. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until November 10, 2020, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on November 3, 2020, within the statutory time limit.

The reason before me that the Landlord indicated on the Notice as the cause for ending the Tenant's tenancy:

- Significantly interfered with or unreasonably disturbed another occupant of the landlord.

I accept the agreed-upon testimony of these parties that there had been a verbal incident between the Tenant and their partner on September 19, 2020, and again on October 26, 2020.

I have reviewed the testimony in this case, and I find that the parties have offered conflicting testimony regarding the level of disturbance involved in the altercations of September 19 and October 26, 2020. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

I have reviewed the Landlord's documentary evidence, the three witness statements submitted to support their claim. I have reviewed those statements with an eye to this portion of the Landlord's claim. After careful review, I find that these statements show a heated exchange between the Tenant and their spouse. However, I find the descriptions

of these events to be insufficient evidence to satisfy me that these incidents caused such significant interference or disturbance to warrant the end of this tenancy. Therefore, I find the Landlord has failed to meet the onus to establish their claim on this point.

Consequently, I find that the Landlord has not proven sufficient cause to satisfy me, to terminate the tenancy for the reason of significantly interfering with or unreasonably disturbing another occupant of the landlord. Therefore, I grant the Tenant's application to cancel the Notice issued October 31, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is granted permission to take a one-time deduction of \$100.00 from their next month's rent in satisfaction of this award.

Conclusion

The Tenant's application to cancel the Notice, issued October 31, 2020, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I grant the Tenant permission to take a one-time deduction of \$100.00 from their next month's rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 30, 2021

Residential Tenancy Branch